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SUBJECT: RESPONSE TO SPECIAL RAPPORTEUR ROLNIK ON HER
COUNTRY VISIT REPORT TO THE U.S. - GENEVA LOG NUMBER
107-2009

¶1. Summary: The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms. Raquel Rolnik, has sent the first draft of her visit to the United States from October 22 to November 8, ¶2009. We forwarded the report to interagency colleagues for their review and comments. Mission is requested to send this response to Ms. Rolnik. This is Geneva Log Number 107-2009.

¶2. Begin text:

Raquel Rolnik
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context
Geneva, Switzerland

Dear Ms. Rolnik,

The United States welcomed your visit and appreciated the opportunity for constructive dialogue and openness. The Obama Administration is committed to creating and preserving affordable housing for the American people.

We have circulated your report to the various government agencies with whom you met and they will consider it as they review policies and programs in the various areas addressed by this report.

Overall comments

The report does not address the many and considerable positive aspects of housing in the United States, including in comparison to other countries. While we acknowledge our shortcomings, the report could point to numerous ways in which housing in the United States could be considered exemplary, such as the high rate of homeownership, the high quality of the vast majority of housing, the high availability and quality of utility services, and significant improvements in these and other areas over recent decades.

The report generally sees government policies, particularly those of the federal government, as the only significant issue related to housing. This approach does not allow for a full consideration of the situation given our federal and free-market system. The report does acknowledge (e.g., p.7 para 13) the large roles of local authorities and the private sector in housing in the United States, but the report's approach and recommendations do not reflect those realities. The federal government's role is in fact just a limited part of the picture of housing in the United States.

As you know, the United States is a signatory, but not a party, to the International Covenant on Economic, Social and Cultural Rights, and does not have a binding international legal obligation under it. We read the report in light of our international law commitments, and interpret most of its

judgments and recommendations as based on policy preferences rather than international legal obligations. The report is correct to raise U.S. obligations under other instruments such as nondiscrimination obligations under the ICCPR and the CERD, but its reference to unspecified &human rights standards8 (p31, para 92) should be clarified. In addition, its reliance on a General Comment of the ESC Rights Committee (p24, para 65 at n.56) should clarify that this statement is from a non-binding interpretation of a treaty to which we are not a party, although we would agree that the Committee has expertise and a mandate in this area.

There are numerous small items and typographical errors, which we imagine you will correct in the editing process and are generally not addressed here. As one example, the statement that a majority of low-income households receive the minimum wage (p.9, para 17) is unsourced and seems unlikely to be correct.

Following are comments on your report from the Department of Housing and Urban Development.

Comments from HUD,s Office of Public and Indian Housing (PIH)

GENERAL COMMENTS: The cities selected and the properties toured could only lead to one conclusion and there seemed to be no inclination to visit other sites to present a more balanced view of housing for low income families and individuals in the United States. In general, the report is fairly accurate in the laying out the legislative history of the subsidized housing programs in the country. There could be more said about the migratory patterns of African Americans from the South to the urban areas of the North and West; more about the overall economic trends that affected jobs and incomes; homeownership patterns; and, much more about how these factors were significantly affected by the changes in public education and other social concerns that affected the same populations.

The report fails to acknowledge the significant investments made by the federal government (via housing authorities) to provide public housing on a scale that integrates it into its surrounding community. While more than 90,000 units of severely distressed public housing units were demolished, the Report fails to acknowledge that more than 100,000 units have been returned to the stock, although not all are affordable to very low income families and individuals. The Report strikes no balance between what was and what is today.

See following comments on particular paragraphs in the report:

#22. It is incorrect to imply that housing agencies tried to compensate for inadequate federal funding by increasing rents. The Brooke Amendment came into being in the 1960s, so without a better time reference, this seems to portray housing providers as trying to make up shortfalls on the backs of the poor. The Brooke Amendment requires that rents on federally-assisted affordable housing are 30% of a household,s adjusted annual income.

#28. Again, only the negatives were highlighted and where relocation, rights of return, replacement units and other housing opportunities were incorporated in the redevelopment, none make this Report. The point lost is did residents get a variety of options from which to choose. Overwhelmingly, the answer is &yes8, but not in the cities or in the examples laid out for her by the advocacy groups who invited her.

#29. The Chicago example of Cabrini-Green represents only a part of the story. With no indication of any understanding of the previous conditions or the economics of the redevelopment deal, the listing of the numbers distorts the reality. Coupled with the billions of dollars of public and private investment in Chicago,s Plan for Transformation, Cabrini-Green is but a small part.

#31. In New Orleans, the demolition of thousands of units of housing occurred, not just public housing. However, in New Orleans, the Housing Authority had embarked on a redevelopment plan which called for the demolition of its distressed public housing stock long before Katrina hit. The condition of the housing pre-Katrina was in the condition the Special Rapporteur now cites in her report as virtually uninhabitable. Post-Katrina, the units were filled with mold and mildew, rendering them uninhabitable. Cleaning the units was impossible since to do so properly meant the destruction of the walls to ensure that the mold was completely removed. Allowing residents to occupy such units would have exacerbated respiratory triggers compromising resident health.

Iberville even cleaned to its very best is housing that does not meet current building code. If rehabilitated to meet that code, the already too small units will not accommodate more than 1-2 people. In addition, because systems are embedded in plaster and/or cement walls, renovations will be more costly than a demolish-rebuild, there will be a natural loss of units in order to size them according to current standards, and the structural integrity will be compromised.

More important, there is no mention of the Rental Housing Assistance offered by HUD to more than 33,000 households so they could rent affordably in the private market. This program assisted residents for more than 4 years and continues to assist about 12,000 eligible families.

#56. The definition of Homeless as used by HUD recognizes that ⁸on the street or in shelter in some ways puts those at greater risk than those doubled up with others.

#68-71. These sections address thorny issues of balancing the needs of one with those of the greater community. It appears as though the Report is suggesting that public housing is ⁸housing of last resort and as such, economic eligibility is the only criteria to be used. There seems to be no understanding that housing authorities can ask for mitigating documentation in order to house a previous offender.

Why should public housing have a different standard for admissions, lease enforcement and other occupancy rules than other subsidized housing in the same community?

#72. The Violence Against Women Act (VAWA) has been in place since 2005, so the policies cited in 68-71 do not negatively target DV victims.

#84. The conditions suggested here indicate lack of understanding of how housing gets built in cities where there is no available vacant land and rebuilding on the footprint is required. No rental production could happen in most places if this becomes the standard.

#101. See #68-71 above.

From HUD,s Office of Fair Housing and Equal Opportunity
(FH&EO)

The federal Fair Housing Act, as amended, prohibits housing discrimination based on race, color, national origin, sex, religion, familial status, or disability. The UN Special Rapporteur recognizes the record level of complaints received and resolved by HUD and our state and local fair housing enforcement partners is generally supportive of this work. HUD agrees that, while significant progress has been achieved over the past four decades of federal housing civil rights law enforcement, more must be done. For example, in 2009, President Obama announced that HUD would examine, for the first time at the federal level, the extent to which lesbians, gay men, bisexual and transgender people face discrimination in renting or owning their homes. Moreover,

HUD has announced plans to promulgate and implement a new federal rule to assist and require local jurisdictions receiving HUD funding to fulfill their responsibility to affirmatively further fair housing. HUD's new emphasis in this area follows a groundbreaking federal court settlement that will result in 750 units of new affordable and accessible housing in areas of low minority concentration one suburban New York county. HUD is also making the linkages between housing and health; housing and education; and housing and life opportunities and creating new measures and strategies to reduce the effects of discrimination and to promote housing choice. The UN Special Rapporteur makes particularly positive note of HUD's Choice Neighborhoods initiative.

Implementation of a fair housing mortgage rescue initiative: HUD is also taking action on foreclosures, particularly with regard to discriminatory lending. In Fiscal Year 2010, Congress appropriated \$11 million in the Fair Housing Initiatives Program to assist those families that are most vulnerable in today's lending/mortgage crises. The \$11 million will be used to educate the public about lending discrimination, enforce the fair lending requirements of the Act, and to train investigators to conducting lending discrimination.

Finally, HUD is also exploring new ways to ensure that housing is made available for people with disabilities. At the individual level, disability-related discrimination is the single most typical complaint received by HUD's Office of Fair Housing & Equal Opportunity. HUD also reviews compliance with Section 504 and is promoting the addition of accessible design features in HUD funded or supported properties and increasing visitability design features where feasible for new construction or substantial rehabilitation projects.

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